

**International Brotherhood of Electrical Workers,  
Local 134 and Communications Workers of  
America, District 4**

**International Brotherhood of Electrical Workers,  
Local 134 and Pepper Construction Company.**  
Cases 13-CD-662-1 and 13-CD-663-1

May 30, 2003

**DECISION AND DETERMINATION OF DISPUTE**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND WALSH

The charges in this Section 10(k) proceeding were filed on September 6, 2002,<sup>1</sup> by Communications Workers of America, District 4 (Communications Workers or CWA) and Pepper Construction Company (Pepper), respectively, alleging that the Respondent, International Brotherhood of Electrical Workers, Local 134 (IBEW or Local 134), violated Section 8(b)(4)(D) by engaging in proscribed activity with an object of forcing Pepper and Alarm Services Network (ASN or Employer) to reassign the installation of fire and burglar alarm systems from ASN employees who are represented by the CWA to the employees that Local 134 represents. The hearing was held on October 29 and November 12, before Hearing Officer Daniel E. Murphy. Pepper, the IBEW, and the CWA each filed posthearing briefs.<sup>2</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

**I. JURISDICTION**

Pepper is a Delaware company, headquartered in Illinois, engaged in the construction business as a general contractor. Within the past calendar year, a representative period, it purchased and received at its Illinois locations goods and materials valued in excess of \$50,000, directly from points outside the State of Illinois. ASN is a Michigan corporation, headquartered in Auburn Hills, Michigan, and has done alarm installation and service work for Target stores in Michigan, Illinois, Indiana, Tennessee, Pennsylvania, Kentucky, and Ohio. Within the past calendar year, a representative period, ASN purchased and received goods and materials valued in excess of \$250,000 from points outside the State of Michigan. The parties stipulated, and we find, that Pepper and ASN are engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties also stipu-

lated, and we find, that the IBEW and CWA are labor organizations within the meaning of Section 2(5) of the Act.

**II. THE DISPUTE**

*A. Background and Facts of Dispute*

Pepper was the general contractor on a Target store expansion project located in Calumet City, Illinois. As part of that project, the job required removing and replacing the old and existing alarm systems (fire and burglar), as well as installing alarm systems in the new space. After the project started in early April, Pepper received a list of seven alarm system subcontractors from Target who were prequalified to bid on this work. One of the prequalified subcontractors, ASN, had performed similar work on over 50 Target stores throughout the Midwest, and was the successful bidder.

Pepper wanted to ensure that no labor problems arose as the result of using ASN and its CWA-represented workers on the Calumet City job. Pepper was concerned because IBEW Business Agent Rich Kelly had inquired of Tom Hosack, Pepper's project superintendent, about the possibility of ASN being awarded the work even before the subcontract had been assigned. Kelly had told Hosack, on more than one occasion during the period from April-July, that the alarm work was IBEW's and that the IBEW did not want the CWA-represented workers in the area. As a consequence, Pepper directed ASN to discuss the issue with the IBEW. ASN called the IBEW and received what it believed to be assurances that there would be no problem if it brought its CWA-represented employees to work in the Chicago area. ASN advised Pepper of that contact, and Pepper and Target proceeded to award the contract to ASN.

ASN's CWA-represented employees arrived on the Calumet City job in early July. By letter dated July 9, the IBEW advised Pepper that "Alarm Services Network does not pay area standard wages and benefits for its electricians." The letter stated that IBEW had asked ASN for written proof that it complied with area standards. The letter also asked if Pepper had such proof, and if so, asked Pepper to turn it over to the IBEW. Finally, the letter advised Pepper that IBEW would engage in picketing and/or handbilling of ASN at the jobsite and that IBEW was not claiming the work at the jobsite, nor claiming to represent the ASN employees.

Pepper notified IBEW that it would investigate the area standards issue, and that it had removed ASN from the jobsite while it did so. Pepper contacted ASN, which provided a copy of its collective-bargaining agreement with CWA as well as wage/benefit documentation. On July 12, Pepper told IBEW that ASN had agreed to

<sup>1</sup> All dates are in 2002 unless otherwise indicated.

<sup>2</sup> ASN did not file a posthearing brief.

match the area standard wages and benefits. In response, also on July 12, IBEW sent a letter to Pepper inquiring about other issues, such as journeyman/apprentice ratios and trust fund payments. The letter concluded by appealing to Pepper to voluntarily exercise its business judgment not to permit ASN to bring out-of-state employees to perform the work while there were many qualified and trained electricians available in the Chicago area.

ASN employees returned to work on July 22. On August 29, IBEW distributed handbills outside Pepper's headquarters stating that ASN did not pay area standards for wages or benefits. On September 3, IBEW distributed another handbill, asserting that ASN had paid \$4 less than it had promised, and questioning, "Wouldn't a responsible contractor remove a subcontractor for violating the terms of their agreement?"

When ASN employees arrived at the worksite on September 4, they checked in with an IBEW steward who was an employee of an electrical subcontractor on the site. When two ASN employees could not produce their union cards, the steward told Pepper that he had contacted IBEW Business Agent Kelly, and that Kelly had said the IBEW would picket the job the next day. Other workers on the site approached an ASN employee several times the same day, accusing ASN of not being union. When the ASN employee replied that ASN employees were CWA members, the response was, "that's not the right one." The ASN employee was also told to "get your ass back" to Michigan. All but three ASN employees left the site; the others finished their work and left. When two ASN employees returned later that evening, they found 10 to 15 IBEW pickets at the entrance, and they chose not to enter the jobsite.

On September 5, IBEW picketed the jobsite with area standards signs. A reserve gate was set up, but ASN employees refused to cross the picket line. The ASN employees went home to Michigan. Pepper then awarded the work to IBEW contractor New United, and the picketing stopped.

#### *B. Work in Dispute*

As stated in the notice of hearing, the work in dispute is "installation of fire and burglar alarm systems at the job site located at 171 East West Road, Calumet City, Illinois."

#### *C. Contentions of the Parties*

The IBEW contends there is no reasonable cause to believe that Section 8(b)(4)(D) has been violated, arguing that its picketing activities had the lawful objects of preserving area standard wages and benefits for workers performing similar work in the Chicago area, and of lawfully appealing to Pepper to exercise its management

discretion in awarding work to subcontractors, pursuant to the standards set forth in *NLRB v. Servette, Inc.*, 377 U.S. 46 (1964). Should the Board reach the merits of the jurisdictional dispute, the IBEW argues that the work in dispute should be awarded to employees it represents based on the factors of collective-bargaining agreements, relative skills and training, area and industry practice, and employer preference.

Pepper and CWA contend that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, arguing that the IBEW claimed the work, and that IBEW's picketing had an object of forcing Pepper and/or ASN to assign the disputed work to employees represented by it rather than to employees represented by CWA. In addition, Pepper and CWA both contend that the disputed work should be awarded to employees represented by CWA based on collective-bargaining agreements, employer preference, and economy and efficiency of operations. Pepper also argues that the CWA-represented employees should be awarded the work based on relative skills, and CWA contends that employees it represents should get the work based on area practice.

#### *D. Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be established that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated. This requires a finding that there are competing claims to disputed work between rival groups of employees and that there is reasonable cause to believe that a party has used proscribed means to enforce its claim. The Board also must find that no method for voluntary adjustment of the dispute has been agreed upon.

Although IBEW denies that it claimed the work in dispute, we find for the following reasons that there is reasonable cause to believe that there are competing claims. Pepper Project Superintendent Hosack testified that, in late April or early May, before ASN's employees were selected to perform the work, IBEW Business Agent Kelly told Hosack that if ASN were to be assigned the work, "there won't be a snowball's chance in hell that they will get a letter out of IBEW authorizing them to work in our area." Hosack testified that Kelly told him "a couple of times" that "it was 134's work." Pepper Project Engineer Kmet testified that Kelly told him in early July "that Pepper and IBEW had a good relationship and that by us bringing in a Michigan contractor to do their work, it really hurts." Finally, IBEW's July 12 letter to Pepper complained that out-of-state employees were doing the work while Chicago area (Local 134) electricians were available.

Although IBEW contends that it never made a direct claim for the work to Employer ASN, the Board has long held that a dispute cognizable under Section 8(b)(4)(D) may exist even though no demand has been addressed to the employer whose employees are performing the work.<sup>3</sup> IBEW's claim to General Contractor Pepper is sufficient to constitute a claim for the work. Finally, the Board has also held that when an employer has assigned disputed work to employees who are not represented by the union claiming the work, there are competing claims.<sup>4</sup> It is clear that Local 134 has demanded work that can only be assigned to employees it represents at the expense of ASN's employees who are represented by CWA. Accordingly, we find there is reasonable cause to believe that there are competing claims to the disputed work.

Pepper and CWA stipulated that there is no agreed-upon method for a voluntary adjustment of the dispute. The CWA contract with ASN contains no such provision. Neither ASN nor Pepper is signatory to an agreement with Local 134. While Local 134 would not join the stipulation, it presented no evidence to the contrary. Accordingly, we find that no agreed-upon method for voluntary adjustment of the dispute exists.

We turn now to the issue of whether there is reasonable cause to believe that IBEW has used proscribed means to enforce its claim for the disputed work. Although the message on the Union's picket signs was couched in area standards language, the evidence aduced at the hearing and summarized above indicates that an object of the picketing was to obtain the assignment of the disputed work. IBEW made clear to Pepper that it considered the alarm work to be IBEW work, that it did not want CWA on the job, and that it would not permit ASN to work on the site. Even after assurances that ASN would meet area standards, IBEW picketed the site. In these circumstances, we conclude that there is reasonable cause to believe that one object of the picketing was to obtain the work for IBEW-represented employees. Where, as here, one object of picketing is proscribed, it is "sufficient to bring a union's conduct within the meaning of 8(b)(4)(D)."<sup>5</sup> We conclude, therefore, that there is reasonable cause to believe that an object of Local 134's picketing was to force or require Pepper

and/or ASN to assign the disputed work to employees Local 134 represents.<sup>6</sup>

Accordingly, for these reasons, we deny Local 134's motion to quash the hearing and find that the dispute is properly before the Board for determination.

### *E. Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

#### 1. Collective-bargaining agreements

ASN is signatory to an agreement with CWA. Although the CWA contract with ASN has no specific "scope of work" provision, ASN's employees employed under that contract perform the disputed work. While the Local 134 agreements cover the type of work in dispute, neither ASN nor Pepper is signatory to an agreement with Local 134. Therefore, because the subcontractor who successfully bid on the work is signatory to only a CWA contract, this factor favors an award of the disputed work to employees represented by CWA.<sup>7</sup>

#### 2. Employer preference

Tom Bailey, ASN vice president of sales, was the representative of management in charge of the alarm installation work at Target stores. He testified that it was ASN's preference to have its employees represented by CWA perform the alarm installation work. This factor

<sup>3</sup> See *Longshoremen Locals 8 and 40 (Port of Portland)*, 233 NLRB 459, 461 (1977) (union's demands for assignment of disputed work made to port authority, rather than to employer performing the work at port, sufficient to establish competing claim).

<sup>4</sup> *Laborers Local 662 (McCarthy Bros.)*, 268 NLRB 926, 927 (1984).

<sup>5</sup> *Plasterers Local 594 (Tectonics Engineering)*, 286 NLRB 259, 260 (1987) (footnote omitted); *Operating Engineers Local 150 (Hankes Plumbing)*, 298 NLRB 650, 652 (1990).

<sup>6</sup> The fact that an object of the picketing was to force reassignment of the work by Pepper, rather than by its subcontractor ASN (the Employer controlling the work), is not a defense. See, e.g., *Asbestos Workers Local 91 (Northern Tier Insulations)*, 278 NLRB 1138, 1139 fn. 7 (1986). Nor does Sec. 8(b)(4)(D) require that the threat or coercion which it proscribes be directed to the employer possessing the power to assign disputed work (ASN). The violation is complete if "any person" (Pepper), is threatened or coerced and an object of that conduct is to force or require "any employer" (ASN) to assign disputed work to one group rather than another. *Electrical Workers Local 26 (McCloskey & Co.)*, 147 NLRB 1498, 1504 fn. 14 (1964), citing *Operating Engineers Local 450 v. Elliot*, 256 F. 2d 630, 635 (5th Cir. 1958).

<sup>7</sup> Contrary to his colleagues, Member Walsh finds that this factor does not favor an award of the disputed work to either group of employees. In his view, the fact that ASN applied a CWA contract to its employees who were assigned the disputed work is insufficient to establish that the contract itself covers the disputed work and supports awarding the disputed work to those employees.

favors an award to the ASN employees represented by CWA.

### 3. Area and industry practice

The record demonstrates that ASN has performed alarm installation work for Target stores in several Midwestern States over the years. IBEW introduced testimony that employees it represents have considerable experience installing fire and burglar alarm systems in Cook County, where the work dispute occurred. However, as argued by Pepper, there is not substantial evidence as to area and industry practice. In our view, this factor does not favor an award of the disputed work to either of the employee groups in this instance.

### 4. Relative skills and training

The evidence presented at the hearing shows that the ASN employees, represented by CWA, possess the required skills and training to perform the disputed work. CWA acknowledged that IBEW electricians were also qualified to perform the disputed work. Accordingly, we find that the factors of skills and training do not favor awarding the disputed work to either group of employees.

### 5. Economy and efficiency of operations

Pepper and ASN contend that it is more efficient for ASN to use its own CWA-represented employees to perform the disputed work than it is to assign it to IBEW-represented employees. ASN employees have performed the exact alarm work at issue here—installing Radionics systems on multiple other Target jobs. Further, when the work was reassigned to IBEW-represented employees, ASN was required to send its Radionics certified employee to oversee the hands-on installation work by Local 134 members who do not have the same experience

or certification. Accordingly, we find that this factor favors awarding the disputed work to ASN's employees represented by CWA.

### Conclusions

After considering all the relevant factors, we conclude that employees represented by CWA are entitled to perform the work in dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference, and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by CWA, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

### DETERMINATION OF DISPUTE

1. Employees of Alarm Systems Network, represented by Communications Workers of America, District 4 are entitled to perform the installation of fire and burglar alarm systems at the jobsite located at 171 East West Road, Calumet City, Illinois.

2. International Brotherhood of Electrical Workers, Local 134 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Pepper Construction Company and Alarm Services Network to assign the disputed work to employees represented by it.

3. Within 14 days from this date, International Brotherhood of Electrical Workers, Local 134 shall notify the Regional Director for Region 13 in writing whether it will refrain from forcing Pepper Construction Company and Alarm Services Network, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.